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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,425	03/09/2004	Michael D. Chambers	LUTZ 2 00292	1890
48116 7590 02/03/2009 FAY SHARPE/LUCENT 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115-1843				
EXAMINER				
SHEIKH, ASFAND M				
ART UNIT		PAPER NUMBER		
3627				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/796,425

Applicant(s)

CHAMBERS ET AL.

Examiner

Asfand M. Sheikh

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-10 and 11-13 are rejected under 35 U.S.C. 101. Based on Supreme Court precedent and recent Federal Circuit decisions, a 35 U.S.C § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the particular machine to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps are not tied to a particular machine and do not perform a transformation. Thus, the claims are non-statutory.

The mere recitation of the machine in the preamble with an absence of a machine in the body of the claim fails to make the claim statutory under 35 USC 101.

Note the Board of Patent Appeals Informative Opinion Ex parte Langemyer et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-10 and 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Eletto (US 7,245,609 B2) in view of Halford (US 6,707,894 B1).

Claims 1-10, and 19-27

D'Eletto discloses method of load-based billing for customers in a communication network (see at least, col. 8, lines 5-20), the method comprising: monitoring utilization of the network in real-time via a switching center in the network (see at least, col. 7, lines 24-col. 8, lines 3 and col. 8, lines 21-27: the examiner notes switches on the network generate data about calls and form a CDR); detecting at the switching center a reportable statistical event based upon the occurrence of a predetermined event trigger (see at least, col. 8, lines 21-27: the examiner notes a CDR); informing a usage level application of the reportable statistical event (see at least, col. 8, lines 21-27: the examiner notes a CDR contains time duration information, etc); determining at the usage level application whether a Usage Level Event has occurred (see at least, col. 8, lines 21-27: the examiner notes the CDR contains Usage Level Events (e.g. time,

duration, etc)); recording at the usage level application the Usage Level Event, when it is determined that a Usage Level Event has occurred (see at least, col. 8, lines 21-27; the examiner notes a CDR is a recording of the usage level event); reporting the Usage Level Event to a set of network elements via the usage level application and the switching center, when it is determined that a Usage Level Event has occurred, the set of network elements including a customer billing platform and a broadcast message application (see at least, col. 7, lines 24-col. 8, lines 3 and col. 8, lines 21-27). Further D'Eletto discloses **[claim 4]** wherein the communication network comprises a wireless network and the switching center comprises a mobile switching center (see at least, col. 7, lines 24-col. 8, lines 3 and col. 8, lines 21-27 and col. 15, lines 57-col. 16, lines 20) and **[claim 6]** via the switching center, writing billing records for the customers and marking calls in the billing records that are based upon the Usage Level Event; and transferring the billing records to the billing platform (see at least, col. 7, lines 24-col. 8, lines 3 and col. 8, lines 21-27) and **[claim 8]** the utilization of the network includes radio network occupancy, trunk occupancy, call processing occupancy, signaling occupancy, or a combination of these (see at least, col. 6, lines 63-col. 7, lines 12) and **[claim 9]** wherein the communication network comprises a multimedia communication network and the switching center comprises a call session control function (see at least, col. 7, lines 24-col. 8, lines 3 and col. 8, lines 21-27) and **[claim 10]** wherein the communication network comprises a landline network and the switching center comprises a landline switching office (see at least, col. 7, lines 24-col. 8, lines 3 and col. 8, lines 21-27 and col. 15, lines 57-col. 16, lines 20).

D'Eletto fails to disclose notifying a set of customers of a change in pricing for calls based upon the Usage Level Event through the broadcast message application and a messaging center, when it is determined that a Usage Level Event has occurred.

However Halford discloses notifying a set of customers of a change in pricing for calls based upon the Usage Level Event through the broadcast message application and a messaging center, when it is determined that a Usage Level Event has occurred (see at least, col. 6, lines 26-43: the examiner notes a pre-determined threshold is used for the remaining pre-paid balance which notifies (e.g. is a form of a message) a Customer in which the customer has the option of changing the price (e.g. transferring funds) to continue the call). Further Halford discloses **[claim 2]** wherein the predetermined event trigger comprises an upper threshold, a lower threshold, a trending threshold, or a duration threshold, or a combination of these thresholds (see at least, col. 6, lines 26-43) and **[claim 3]** wherein the determination of whether a Usage Level Event has occurred is based upon an upper threshold, a lower threshold, a trending threshold, or a duration threshold, or a combination of these thresholds (see at least, col. 6, lines 26-43) and **[claim 5]** wherein the set of network elements further includes a prepaid platform (see at least, col. 6, lines 26-43) and **[claim 7]** determining at the usage level application that a Usage Level Event should be terminated based upon a set of usage event termination criteria; informing the prepaid platform, the messaging center, the broadcast message application, and the mobile switching center that the

Usage Level Event has terminated; and notifying the customers via the messaging center that the change in pricing has terminated (see at least, col. 6, lines 26-43).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of D'Eletto to include the features as taught by Halford. One of ordinary skill in the art would have been motivated to combine the teachings in order to allow for the customer to extend the service required within a calling session thereby delimiting the risk of not being able to make a call or complete a call in progress due to the expiration of prepaid time (see at least, Halford, col. 1, lines 52-58).

Claims 11-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Eletto (US 7,245,609 B2) in view of Halford (US 6,707,894 B1) and Henrikson (US 2004/0218564 A1) and Examiner's Official Notice.

Claims 11-13 and 15-18

D'Eletto in view of Halford discloses the features found in limitations as noted above for claim 1 and further discloses the use of sending a message an application, the message indicating the Usage Level Event and the scope of the event; however D'Eletto in view of Halford fails to disclose retrieving from a subscriber database billing rate information for the calling plans based upon the Usage Level Event; querying the targeted marketing application for information concerning the customers that are active within the scope of the Usage Level Event and the calling plans that are impacted by

the Usage Level Event, and sending a message to the customers that are active within the scope of the Usage Level Event, the message including a notification to the customers of a temporary change in pricing based upon the Usage Level Event.

However Henrikson discloses the ability to notify a user based on the change in billing rate for an active communication session (see at least, [0026]; the examiner interprets that a notification of the change in the billing rate requires billing rate information for the customer). Further Henrikson **[Claims 12-13 and 17]** discloses home location register/subscriber service and a SMS center (see at least, [0016] and [0017])

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of D'Eletto in view of Halford to include the features as taught by Henrikson. One of ordinary skill in the art would have been motivated to combine the teachings in order to allow for promotion in timeliness of notification to a subscriber of a change in billing rate that results from a handoff of a call (see at least, Henrikson, [0005]).

D'Eletto in view of Halford and Henrikson fails to disclose to disclose billing rate information that relates to a calling plan for the Customer and applications query this information for notification purposes.

The examiner takes Official Notice that it is old and well known in the mobile cellular arts to have customers associated with an account/profile that would contain a billing rate information that relates to a calling plan and further the notification of the switch from an given rate to anther rate based on the lookup for customer calling plan

information (e.g. notification from the switch from normal service to roaming service which leads to an entail of different price) that is extracted by an application that has ability to query customer profiles.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teachings of D'Eletto in view of Halford and Henrikson to include the features as taught by Examiner's Official Notice. One of ordinary skill in the art would have been motivated to combine the teachings in correctly bill a customer for the correct amount of airtime utilized.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Asfand M. Sheikh whose telephone number is (571)272-1466. The examiner can normally be reached on 9a-5p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan M. Zeender can be reached on (571)272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Asfand M. Sheikh/
Examiner, Art Unit 3627
1/30/2009

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627